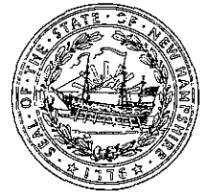




State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-2147 FAX (603) 271-6588



Town of Alexandria
45 Washburn Road
Alexandria, NH 03222

Re: Mundy Road, Alexandria
Wetlands Bureau File 2003-1852

ADMINISTRATIVE ORDER
No. WD 03-025

November 14, 2003

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to the Town of Alexandria pursuant to RSA 482-A:6. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division, ("DES") is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03301.
2. The Town of Alexandria ("Town") is a political subdivision having a mailing address of 45 Washburn Road, Alexandria, NH 03222.

C. STATEMENTS OF FACTS AND LAW

1. RSA 482-A authorizes DES to regulate dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted NH Code of Admin. Rules Wt 100 *et seq.* to implement this program.
2. RSA 482-A:3, I states that "no person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without permit from [DES]."
3. The Town is the owner of property located at Mundy Drive in Alexandria, NH, more specifically identified on Town of Alexandria Tax Map 411 as Lot 1 ("the Property").
4. The Property is being developed as a public works facility by the Town. The Town hired Larry Sharp to log, stump, and grade the site.
5. In May 2002, Lobdell Associates prepared a wetlands delineation of the Property. The wetlands delineation was incorporated into a survey prepared by Colin R. Brown dated June 24, 2002 and identified the wetlands delineated by Lobdell Associates on the survey.

6. In July 2003, Larry Sharp, a contractor the Town had hired to do the initial site work, logged, stumped, and graded the site. The wetlands that were delineated by Lobdell Associates were filled as a result of the site work.
7. On August 8, 2003, DES received a report that fill had been placed in a jurisdictional wetland on property owned by the Town.
8. A review of DES records show that no permit was issued under RSA 482-A:3 to the Town for the work on the property.
9. On September 5, 2003, DES personnel conducted an inspection of the Property and found the following:
 - a. Approximately 7,300 square feet of wetlands had been filled during site development activities for a new public works facility;
 - b. Erosion controls were not maintained, and in some instances, the silt fence completely failed, causing sediment to enter into wetlands at the southeast corner of the Property; and
 - c. Road embankments were not seeded or mulched and as a result were unstable. Rills and gullies were evident.
10. During the inspection in the presence of DES personnel, JP Morrison, the new contractor for the site work, was told by Peter Schauer, the wetland consultant retained by the Town, to immediately maintain and re-install erosion controls and to stabilize the side slopes to the road embankments by seeding and mulching. Mr. Morrison agreed to do so.
11. On September 26, 2003, DES personnel conducted a follow-up inspection and found the following:
 - a. Existing erosion controls had not been maintained; and
 - b. Road embankments were not seeded or mulched and were continuing to erode.

D. DETERMINATION OF VIOLATIONS

1. The Town has violated RSA 482-A:3, I by placing approximately 7,300 square feet of fill in a wetland for lot development.
2. The Town has violated RSA 482-A:3, I by impacting and filling wetlands at the southeast end of the Property without a permit.

E. ORDER

Based on the above findings, DES hereby orders the Town as follows:

1. **Immediately** retain a certified wetlands scientist to prepare and supervise implementation of a restoration plan for the unpermitted impacts to wetlands on the Property.
2. **Immediately** install orange construction fencing and silt fencing at the edge of all wetlands on the Property. Submit documentation of compliance with this requirement within 10 days of receipt of this Order.
3. **By December 30, 2003**, submit a plan, drawn to scale, prepared by a wetland scientist or environmental engineer to DES for review and approval. The plan shall include the following:
 - a. Existing conditions, with wetland boundaries, and proposed conditions after removal of all unpermitted fill/sediment;
 - b. Proposed means of erosion control;
 - c. Planting plan for stabilization and revegetation of the areas to be restored;
 - d. A construction sequence including equipment and methods for completion of the restoration; and
 - e. A monitoring schedule, including two restoration progress assessment reports by a certified wetland scientist to be filed with the DES Wetlands Bureau and a failure response strategy.
4. **Within 14 days** of receiving written approval from DES, implement the plan as conditioned by DES.

Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Linda Magoon, Compliance Specialist
DES Water Division, Wetlands Bureau
6 Hazen Drive – P.O. Box 95
Concord, NH 03301
Fax: (603) 271-6588
e-mail: lmagoon@des.state.nh.us

F. APPEAL

Any person aggrieved by this Order may request DES to reconsider the Order within 20 days of the date of the Order. The request for reconsideration must describe in detail each ground for the request. DES may grant a rehearing, if in its opinion, good cause is provided in the motion.

Filing an appeal or motion for reconsideration does not relieve the Town of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 482-A:13 and RSA 482-A:14 provide for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. The Town remains obligated to comply with all applicable requirements.

COPY

Harry T. Stewart, P.E., Director
Water Division

COPY

for Michael P. Nolin, Commissioner
Department of Environmental Services

Certified Mail/RRR: 7000 0600 0023 9936 5183

cc: Gretchen Rule, DES Legal Unit
Public Information Officer, DES PIP Office
Jennifer Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Rene Pelletier, DES Land Resource Management Program
Mary Ann Tilton, DES Wetlands Bureau
Alexandria Conservation Commission
Peter Schauer, SEC LLC